

SENATE BILL NO. 10

INTRODUCED BY R. LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE BOARD OF PUBLIC EDUCATION FROM IMPLEMENTING ANY RULE, POLICY, OR STANDARD THAT WILL HAVE A SUBSTANTIAL FINANCIAL IMPACT ON A SCHOOL DISTRICT UNTIL THE LEGISLATURE APPROPRIATES MONEY TO FUND IMPLEMENTATION OF THE RULE, POLICY, OR STANDARD; AMENDING SECTIONS 1-2-113 AND 20-2-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, in drafting Article X, section 1(3), of the 1972 Montana Constitution, which requires that the Legislature provide and fund its share of the cost of a basic system of free quality public elementary and secondary schools, Delegates Harbaugh and Habedank explain, on pages 1961 through 1963 of Volume VI of the Montana Constitutional Convention Verbatim Transcript, that the intent of the provision is to impose upon the Legislature the responsibility to fund a minimum or basic program determined or established by the Legislature; and

WHEREAS, Article XI, section 11, of the 1889 Montana Constitution vested general control and supervision of the state university system and the various other state educational institutions in one state board of education whose powers and duties were prescribed by the Legislature; and

WHEREAS, in adopting Article X, section 9, of the 1972 Constitution, the framers revised the 1889 provision by purposely creating a Board of Regents of Higher Education vested with "full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system" and a separate Board of Public Education with the authority to "exercise general supervision over the public school system and such other public educational institutions as may be assigned by law" and to perform other duties provided by law; and

WHEREAS, on page 2097 of Volume VI of the Constitutional Convention Verbatim Transcript, delegate Champoux, in explaining the differences between the language of the old provision and the proposed new provision, specifically addresses the intent of the framers to alleviate the fears of local school boards by eliminating the word "control" from the provision and vesting in the new Board of Public Education authority to "supervise" the public education system and other educational institutions "as provided by law"; and

WHEREAS, the language of Article X, section 9, of the 1972 Montana Constitution, as approved by the

1 electorate, clearly vested in the Board of Regents full power, responsibility, and authority to manage and
2 "control" the Montana university system and reduced the newly created Board of Public Education's role over
3 public education to one of "general supervision", while "supervision and control" was specifically vested in local
4 school boards in Article X, section 8; and

5 WHEREAS, the plain meaning of Article X, section 9, of the 1972 Montana Constitution, along with the
6 transcript of the 1972 Constitutional Convention, supports a conclusion that the Board of Public Education's
7 authority did not equal that vested in the Board of Regents over higher education but rather restricted the Board's
8 authority over primary and secondary public education to one of "general supervision" while reserving
9 "supervision and control" of public schools to the local school district trustees; and

10 WHEREAS, in *Helena Elementary School District No. 1 v. State*, 236 Mont. 44, 769 P.2d 684 (1989),
11 the Montana Supreme Court ruled that the accreditation standards adopted by the Board of Public Education
12 by rule constitute "the minimum standards upon which a quality education must be built" but do not fully define
13 either the constitutional rights of students or the constitutional responsibilities of the state for funding its public
14 schools; and

15 WHEREAS, in 1992, a District Court decision, *Montana Board of Public Education v. State* (Cause No.
16 BDV-91-1072, First Judicial District, 1992), held that Article X, section 9(3), of the 1972 Montana Constitution
17 provided the Board of Public Education with "constitutional rule-making authority" which is "self-executing and
18 independent of any power that is delegated to the Board by the legislature"; and

19 WHEREAS, despite this clear intent to limit the authority of the Board of Public Education to one of
20 "general supervision" and to reserve for the Legislature a role in determining the "basic program", a combined
21 reading of the 1989 Montana Supreme Court school funding decision and the 1992 District Court decision has,
22 in effect, reduced the Legislature's role to one of "financier" by stripping it of any meaningful role in shaping the
23 basic system of public education.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26
27 **Section 1.** Section 1-2-113, MCA, is amended to read:

28 **"1-2-113. Statutes or board of public education rules, policies, or standards imposing new duties**
29 **on a school district ~~to provide~~ -- means of financing or specific appropriation required prior to**
30 **implementation.** (1) Any law enacted by the legislature that requires a school district to perform an activity or

1 provide a service or facility ~~and that will require the direct expenditure of additional funds or any rule, policy, or~~
2 ~~standard adopted by the board of public education~~ that will require the direct expenditure of additional funds
3 must provide a specific means or appropriation to finance the activity, service, ~~or facility, rule, policy, or standard~~
4 other than the existing property tax mill levy. Any law that fails to provide a specific means to finance the activity,
5 service, or facility or any rule, policy, or standard for which money is not appropriated is not effective until a
6 specific means of financing meeting the requirements of subsection (2) is provided by the legislature.

7 (2) Financing must be by means of a remission of money or appropriation by the state for the purpose
8 of funding the activity, service, or facility or specifically implementing a board rule, policy, or standard. Financing
9 must bear a reasonable relationship to the actual cost of performing the activity, ~~or providing the service or~~
10 facility, or implementing the rule, policy, or standard.

11 (3) Legislation passed and approved may not supersede or modify any provision of this section, except
12 to the extent that the legislation expressly does so.

13 (4) This section does not apply to any law under which the required expenditure of additional funds by
14 the board of trustees is an insubstantial amount that can be readily absorbed into the budget of an existing
15 program."
16

17 **Section 2.** Section 20-2-115, MCA, is amended to read:

18 **"20-2-115. Rules with substantial financial impact -- fiscal note -- effect without funding.** (1) When
19 developing rules, policies, and standards under 20-2-121(6), (7), (9), and (11), the board of public education
20 shall determine the financial impact of the rule, policy, or standard on school districts.

21 (2) The superintendent of public instruction shall prepare a fiscal note for submission to the board, using
22 criteria and assumptions developed by the board. The fiscal note must be prepared within 30 days of a request
23 unless the board agrees to a longer time. The board may also accept other testimony and exhibits on the
24 financial impact to school districts before proceeding to rulemaking.

25 (3) If the financial impact of the proposed rule, policy, or standard is found by the board to be
26 substantial, the board may not implement the rule until ~~July 1 following the next regular legislative session and~~
27 ~~shall request the next legislature~~ appropriates money, as required under 1-2-113, to fund implementation of the
28 proposed rule, policy, or standard through the BASE funding program. A substantial financial impact is an
29 amount that cannot be readily absorbed in the budget of an existing school district program.

30 (4) A proposed rule, policy, or standard not found by the board to have a substantial financial impact

1 on school districts or that has been funded by the legislature may be implemented at any time."

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3 NEW SECTION. **Section 3. Effective date -- applicability.** [This act] is effective on passage and
4 approval, and applies to any rule, policy, or standard adopted by the board of public education on or after [the
5 effective date of this act].

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